IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26-10- 2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.13726 of 2004

S.Samuthiram ... Petitioner

vs.

1. The Tamil Nadu Administrative Tribunal
   Madras Bench,
   Rep. by its Registrar,
   City Civil Court Building,
   High Court Campus,
   Chennai - 104.

2. The Deputy Inspector General of Police
   Tirunelveli Range,
   Tirunelveli.

3. The Superintendent of Police
   Tirunelveli District,
   Tirunelveli. .. Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the Proceedings of the first respondent, Tamil Nadu Administrative Tribunal in O.A.No.1144 of 2000, dated 23.03.2004, confirming the order in P.R.No.174 of 1999, dated 04.01.2000 of the third respondent and quash the same.

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For Petitioner : Mr.N.Vijay Shankar

For Respondents : Mr.K.Balakrishnan, AGP

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O R D E R

S.TAMILVANAN, J

This writ petition has been preferred by the petitioner, against the order, dated 23.03.2004 made in O.A.No.1144 of 2000 by the Tamil Nadu Administrative Tribunal, whereby the Original Application filed by the petitioner herein was dismissed.

2. The brief facts needed for disposal of the case :

It has been admitted that the petitioner joined the service of Armed Reserve Police, as Police Constable, Grade II on 27.05.1988 and served at various places in Tirunelveli District. On the relevant date, 09.07.1999, he was deputed to Kuttralam for season bandobust duty. While so, the petitioner was charged for an offence of eve-teasing and placed under suspension. After Departmental Enquiry, he was removed from service by respondents 2 and 3. Aggrieved by which, he preferred the Original Application, which was dismissed by the Tamil Nadu Administrative Tribunal.

3. Mr. N.Vijay Shankar, learned counsel appearing for the petitioner contended that on the same set of facts, criminal case was also filed against the petitioner in Cr.No.625 of 1999 on the file of Tenkasi Police Station, which ended in honourable acquittal, as the complainant and her husband did not support the prosecution case, saying that they could not identify the person, who committed eve-teasing. According to him, it is a honourable acquittal, hence, the departmental action resulting in his removal from service is legally not sustainable. In support of his contention, learned counsel cited the following decisions :

1. State of Tamil Nadu vs. M.Jayapal, 2005 (2) MLJ 486
2. G.M.Tank vs. State of Gujarat and another, 2006 (3) MLJ 143 (SC)

4. Per contra, Mr. K.Balakrishnan, learned Additional Government Pleader appearing for the respondents contended that in the Departmental Enquiry, charges framed against the petitioner have been proved, though he was acquitted in the criminal case and hence, the punishment of removal from service is legally sustainable. In support of his contention, learned counsel for respondents relied on the following decisions :

1. Nand Kishore vs. State of Bihar, AIR 1978 SC 1277
2. Noida Entrepreneurs Assn. vs. Noida, 2007 (3) CTC 211

and also unreported decisions of this Hon'ble Court.

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5. In the decision, Noida Entrepreneurs Assn. vs. Noida, reported in 2007 (3) CTC 211, the Three Judge Bench of the Hon'ble Supreme Court has held as follows :

> " The purpose of Departmental Enquiry and of prosecution is two different and distinct aspects. The Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty..."

It has been further held that the standard of proof required in Departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar the departmental proceedings.

6. In the decision, G.M.Tank vs. State of Gujarat and another, reported in 2006 (3) MLJ 143 (SC), the Hon'ble Apex Court, referring the case of Capt. M.Paul Anthony vs. Bharath Gold Mines Ltd., reported in 1999 (3) SCC 679, has held that though finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. In the decision referred above, it has been held at page number 153 as follows :

> " It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed..."

7. In the light of the decisions rendered by the Hon'ble Apex Court, it is quite clear that if a criminal case and departmental proceedings against an official are based on the same set of facts and evidence and the criminal case ended in honourable acquittal and not on technical grounds, imposing punishment of removal of the delinquent official from service, based on the finding of domestic enquiry would not be legally sustainable.

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8. The charge against the petitioner herein is that on 09.07.1999 at about 23 hrs, in a drunken mood, he committed eve-teasing of one Pitchammal, aged about 44 years, while she was with her husband at Tenkasi bus stand and also absented from duty on 10.7.1999 between 7 a.m and 3.45 p.m. It is not in dispute that the case in Cr.No.625 of 1999 had been filed against the petitioner u/s 509 IPC and Section 4 of TN Prohibition of eve-teasing Ordinance Act, 1988. In connection with the case, he was arrested on 10.07.1999 at about 1.30 a.m, and hence, he could not report duty on 10.07.1999.

9. As per the Judgment, dated 20.11.2000 rendered by Judicial Magistrate, Tenkasi, the said criminal case filed against the petitioner was ended in acquittal, since the complainant and her husband did not support the prosecution case. As per the finding of the criminal court, the complainant and her husband deposed that an unknown person had come and scolded the complainant in filthy language, but they could not identify the said person and that they did not know the petitioner herein. In the aforesaid criminal case, the Judicial Magistrate has held that the alleged charges against the petitioner have not been proved, since the prime witnesses namely, the complaint P.W.1 and P.W.2 did not support the prosecution case. In these circumstances, we are of the view that non-identification of the petitioner by the complainant and her husband goes to the root of the case. It is not in dispute that against the judgment of acquittal, no appeal has been preferred and hence, as contended by the learned counsel for the petitioner, the judgment of acquittal became final.

10. As per the evidence of the Doctor, who was examined as P.W.8 and as per Ex.P.4, Certificate issued by him, the petitioner had consumed alcohol, but was found normal and had no adverse influence of alcohol. According to him, no blood or urine test was conducted to find out whether he had consumed alcohol or not, as the person was not willing for the test. In such circumstances, we are of the considered view that the above version of the doctor could not be construed as sufficient material to hold the petitioner guilty that he was in a drunken mood at the place of occurrence.

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11. Admittedly, the petitioner was not on duty at the time of the alleged occurrence, said to have been taken place at the old bus stand of Tenkasi. The allegation is that he had committed eve-teasing on the complainant, while she was with her husband, but both of them could not identify the person, who had scolded the complainant in filthy language. When the complainant and her husband could not identify the person in the Court and deposed that they did not know the petitioner, it could not be possible

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for them to identify the petitioner only in the Departmental Enquiry. The vital self-contradiction of the prime witnesses, P.W.1 and P.W.2 cuts the very root of the case, since the identity of the person itself is in question.

12. The Hon'ble Supreme Court in the decision, Nand Kishore vs. State of Bihar, reported in AIR 1978 SC 1277, has categorically held as follows :

> " The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic enquiries..."

13. It is settled proposition of law that in a domestic enquiry, the guilt against the person need not be proved beyond reasonable doubt, as required in a criminal case and preponderance of probability is sufficient to hold a person guilty of the charge and punish him, but mere suspicion cannot be allowed to take the place of proof even in domestic enquiries. When there are charges based on same set of facts before the criminal court and in the domestic enquiry and the criminal case is ended in honourable acquittal, the very same witnesses would not be permitted to give a totally contradictory version in the domestic enquiry. It is not in dispute that P.W.1 (Vanamamalai) and P.W.2 (Pitchammal) have deposed before the Judicial Magistrate, Tenkasi, that an unknown person had hurled abusive words against P.W.2 on 09.07.1999 at 11 p.m at the old bus stand of Tenkasi and they did not know who the person was and according to them, they did not know the petitioner / accused. On that basis, the learned Judicial Magistrate, Tenkasi has recorded acquittal in the criminal case on 20.11.2000.

14. As contended by the learned counsel for the petitioner, on the above facts and circumstances, it has to be construed only as a honourable acquittal. Hence, in the light of the rulings of the Hon'ble Apex Court in Capt. M.Paul Anthony vs. Bharath Gold Mines Ltd., reported in 1999 (3) SCC 679, in the departmental proceedings, a contrary view cannot be taken to hold a different finding and to remove the petitioner from service, since P.W.1 and P.W.2 in the criminal case are the prime witnesses in the departmental proceedings. The said witnesses having deposed that

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they did not know the petitioner / accused are not entitled to raise totally a contradictory version in the enquiry proceedings.

15. Admittedly, the petitioner was arrested on 10.07.1999 at about 1.30 hrs and was detained, therefore, it could not be possible for him to attend the duty on 10.07.1999 between 7 a.m and 3.45 p.m. Therefore, the third charge framed against the petitioner that he had failed to report duty on 10.07.1999 at 7 a.m till 3.45 p.m is also not legally sustainable.

16. On the facts and circumstances of the case, we are of the considered view that the impugned orders passed by the respondents are contrary to the law laid down by the Hon'ble Apex Court in various decisions referred above and as such liable to be set aside.

17. Accordingly, the writ petition is allowed and the impugned orders passed by the respondents are set aside and we direct the respondents 1 and 2 to reinstate the petitioner with continuity of service forthwith. However, we hold that the petitioner is entitled to back wages only from the date of his acquittal in the criminal case.

18. The writ petition is ordered accordingly. No order as to costs.

tsvn

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Deputy Inspector General of Police
   Tirunelveli Range, Tirunelveli.

2. The Superintendent of Police
   Tirunelveli District,Tirunelveli.

+ 1 cc to Mr. M. Veluswami, Advocate SR No. 64573

Order in
W.P.No.13726 of 2004

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